

REMARKS

Claims 1-8, 10-13, 15-22, 24-27, and 29 are pending in this application, of which claims 2-8, 12, 13, 16-22, 26, and 27 have been withdrawn from consideration by the Examiner as being drawn to a non-elected species.

Applicant has amended claims 1, 10, 15, 24, and 29, and has canceled claims 9, 14, 23, and 28. These changes do not introduce any new matter.

Provisional Rejection Under 35 U.S.C. § 101

Applicant respectfully requests reconsideration of the provisional rejection of claims 1, 14, 15, 28, and 29 under 35 U.S.C. § 101 as claiming the same invention as that of claims 1, 11, 12, 22, and 23 of copending Application No. 10/655,678 (as noted above, Applicant has herein canceled claims 14 and 28). Applicant has amended each of independent claims 1, 15, and 29 to include features not found in the cited claims of the copending '678 application. Accordingly, Applicant requests that the provisional rejection of claims 1, 15, and 29 under 35 U.S.C. § 101 be withdrawn.

Rejections Under 35 U.S.C. § 102

Applicant respectfully requests reconsideration of the rejection of claims 1, 14, 15, and 28 under 35 U.S.C. § 102(b) as being anticipated by *Fukushima et al.* ("*Fukushima*") (U.S. Patent No. 5,940,530) (as noted above, claims 14 and 28 have been canceled herein). As will be explained in more detail below, the *Fukushima* reference does not disclose each and every feature specified in independent claims 1 and 15, as amended herein.

Applicant has amended each of independent claims 1 and 15 to include features that are not shown in the *Fukushima* reference. In particular, Applicant has amended claim 1 to include the features of original claim 9, and has amended claim 15 to include the features of original claim 23. As such, claims 1 and 15, as amended herein, are patentable under 35 U.S.C. § 102(b) over *Fukushima*.

Applicant respectfully requests reconsideration of the rejection of claims 1, 9-11, 15, 23-25, and 29 under 35 U.S.C. § 102(e) as being unpatentable over *Uchino et al.* (“*Uchino*”) (U.S. Patent App. Publication No. US 2002/0008771 A1) (as noted above, claims 9 and 23 have been canceled herein). As will be explained in more detail below, the *Uchino* reference does not disclose each and every feature specified in independent claims 1, 15, and 29, as amended herein.

As noted above, Applicant has amended claim 1 to include the features of original claim 9, and has amended claim 15 to include the features of original claim 23. In addition, Applicant has amended claim 29 to include the features of original claim 9.

The *Uchino* reference discloses a digital camera that includes a correcting process determining section for determining an image correcting process in accordance with the metering type used in capturing the image. In Paragraph [0039], the *Uchino* reference describes the structure of digital camera 1. The *Uchino* reference also discloses as follows:

1) “In the case of the spot metering, the brightness in a center metering area 71a (hatched area) is measured by the metering section 27. In the case of the multi-area metering, the brightness of all the metering areas 71 is measured by the metering section 27.”

Paragraph [0053];

2) “an image captured is divided into a plurality of divided areas 72” Paragraph [0067];

3) “In the case where the divided area 72 includes the metering area 71, by using the metering value obtained from the metering area 71, whether image correction is necessary or not and what kind of image correction is to be made is determined.” Paragraph [0068]; and

4) “When the divided area 72 does not include the metering area 71, a computing process is performed by using the respective values of the pixels in the divided area 72 to

determine whether image correction is necessary or not and, further, what kind of image correction is to be made is (sic).” Paragraph [0068].

None of the above portions of the *Uchino* reference refers to the use of a pixel value histogram of the image data. Nor is there any mention of the use of a pixel value histogram of the image data elsewhere in the *Uchino* reference. As such, the *Uchino* reference does not teach (or suggest) at least the second judgment feature specified in independent claims 1, 15, and 29 (as recited in, for example, claim 1, this feature involves “(ii) a second judgment, when the image generation record information does not negate the necessity of the backlight adjustment processing in the first judgment, to decide whether or not to execute the backlight adjustment processing based on a pixel value histogram of the image data”). Thus, for at least this reason, the *Uchino* reference does not disclose each and every feature of the presently claimed subject matter.

Accordingly, for at least the foregoing reasons, independent claims 1, 15, and 29, as amended herein, are patentable under 35 U.S.C. § 102(e) over *Uchino*. Claims 10 and 11, each of which ultimately depends from claim 1, and claims 24 and 25, each of which ultimately depends from claim 15, are likewise patentable under 35 U.S.C. § 102(e) over *Uchino* for at least the same reasons set forth above regarding the applicable independent claim.

With regard to the rejection of claims 14 and 28 under 35 U.S.C. § 102(e) as being anticipated by *Kinjo* (U.S. Patent No. US 7,145,597 B1), as noted above, claims 14 and 28 have been canceled herein. Accordingly, the anticipation rejection of claims 14 and 28 based on the *Kinjo* reference is moot.

Conclusion

In view of the foregoing, Applicant respectfully requests reconsideration and reexamination of claims 1, 10, 11, 15, 24, 25, and 29, as amended herein, and submits that these claims are in condition for allowance. Accordingly, a notice of allowance is respectfully requested. In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at **(408) 749-6902**. If any additional fees are due in connection with the filing of this paper, then the Commissioner is authorized to charge such fees to Deposit Account No. 50-0805 (Order No. MIPFP057.CIP).

Respectfully submitted,
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